

EXHIBIT

3

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION

v.

U.S. DEPARTMENT OF
AGRICULTURE, et al.,

:

:

:

: Case No.

: 2:2020cv00041

:

:

:

Monday, April 25, 2022

30(b)(6) Zoom Videoconference
deposition of JOHN KLEIN, taken with the witness
participating from his residence, beginning at
9:38 a.m., Eastern Standard Time, before Ryan K.
Black, a Registered Professional Reporter,
Certified Livenote Reporter and Notary Public.

<p style="text-align: right;">Page 70</p> <p>1 way, right?</p> <p>2 A. Part of the business or there have been</p> <p>3 transactions back and forth between spouses; or</p> <p>4 if there's community property states and we want</p> <p>5 to make sure things are evenly divided, all those</p> <p>6 things come up and we look at those issues.</p> <p>7 Q. Does a spouse have to fill out the form</p> <p>8 regardless of whether those specific issues are</p> <p>9 relevant in a particular application?</p> <p>10 A. I don't think so any longer, but -- I</p> <p>11 could be mistaken, but I don't think so.</p> <p>12 Q. There was, at one time, a requirement</p> <p>13 that they do, right?</p> <p>14 A. I think at one point in time they did it</p> <p>15 across the board, and I think they've come back</p> <p>16 from that to a certain degree. But I don't want</p> <p>17 to say what the answer is across the board,</p> <p>18 because, again, that's not something that I look</p> <p>19 at carefully.</p> <p>20 Q. Okay. If an owner identifies as a</p> <p>21 member of one of the groups for which there is a</p> <p>22 presumption of social disadvantage, does that</p> <p>23 owner have to certify that he or she has been a</p> <p>24 victim of chronic and substantial discrimination?</p> <p>25 A. They do not have to do that in addition</p>	<p style="text-align: right;">Page 72</p> <p>1 group, you can so certify, right?</p> <p>2 A. That is correct. And, again, as we were</p> <p>3 talking about before, these certifications are,</p> <p>4 in fact, under penalty of perjury, so we are</p> <p>5 assuming that they are correct.</p> <p>6 Q. Right. But I'm just trying to make</p> <p>7 sure I understand what they're asking to certify.</p> <p>8 They're not being asked to certify that they have</p> <p>9 held themselves out as a member of a presumptive</p> <p>10 group for the last 10 years. They're asked --</p> <p>11 A. No. That's correct. There's no time</p> <p>12 limit on that question. That's correct.</p> <p>13 Q. Okay. So if, in fact, they do identify</p> <p>14 as a member of a presumptive group because they</p> <p>15 had just received something that identifies</p> <p>16 themselves as a member of that group, that</p> <p>17 person can so certify, right?</p> <p>18 A. They can certify, yes. But in the</p> <p>19 example that we were talking about regarding the</p> <p>20 Native American, they are required to show their</p> <p>21 tribal card. And if their tribal card says, you</p> <p>22 know, April 1st, 2022, that could be problematic.</p> <p>23 Q. Okay. But there, presumably, is not a</p> <p>24 analog to a tribal card for, I don't know, Native</p> <p>25 Hawaiians, right?</p>
<p style="text-align: right;">Page 71</p> <p>1 to identifying. They must identify that they</p> <p>2 actually hold themselves out as that individual.</p> <p>3 Like, for instance, if you are a Native American</p> <p>4 and you grew up your entire life not identifying</p> <p>5 as a Native American, and a week before you</p> <p>6 applied to the program you finally got a card</p> <p>7 realizing that your great, great grandfather was</p> <p>8 a Native American, that may not suffice since</p> <p>9 you've never held yourself as a Native American</p> <p>10 and, therefore, no one, in fact, treated you as</p> <p>11 such or discriminated against you because of that</p> <p>12 identity.</p> <p>13 Q. So is there something on the application</p> <p>14 that requires an individual to say that they have</p> <p>15 identified as a member of a presumptive group for</p> <p>16 a certain period of time?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Okay. And is there a period of time</p> <p>19 minimum?</p> <p>20 A. No, not a period of time. But you have</p> <p>21 to affirmatively say that you've held yourself</p> <p>22 out as.</p> <p>23 Q. Okay. But as long as you can certify</p> <p>24 that you do, at the time that you fill out the</p> <p>25 form, identify as a member of a presumptive</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yeah. I don't know of any such thing.</p> <p>2 Q. Or Hispanic, right? There's no analog</p> <p>3 to a tribal card for Hispanic, right?</p> <p>4 A. I think that's true.</p> <p>5 Q. Okay. Does the SBA make any</p> <p>6 investigation outside the information that's</p> <p>7 provided in the application to determine whether</p> <p>8 or not to approve it?</p> <p>9 A. I don't think that makes sense. The</p> <p>10 application speaks for itself. If there's things</p> <p>11 missing from the application, the SBA would ask</p> <p>12 for clarity. Again, the burden is on the</p> <p>13 applicant to demonstrate that he or she is, in</p> <p>14 fact, eligible for the program. If that burden</p> <p>15 has not been met, we would either decline</p> <p>16 the application or we would ask for further</p> <p>17 information to make it clear that they are, in</p> <p>18 fact, eligible or not. We wouldn't just make</p> <p>19 things up on our own.</p> <p>20 Q. Okay. So I think that answers my</p> <p>21 question, but I want to make sure I understand</p> <p>22 it. The SBA wouldn't go looking for information</p> <p>23 that might contradict something that is in the</p> <p>24 application?</p> <p>25 A. No, we do do that. We definitely do</p>

ERRATA

1

2 PAGE LINE CHANGE

3 P. 11; Line 24; insert the word "the" between the words "to" and "8(a)" -----

4 Reason for

5 Change: Typo

6 PAGE LINE CHANGE

7 P. 13; Line 12 and Line 13; change the word "cell" to "sub" -----

8 Reason for

9 Change: Typo

10 PAGE LINE CHANGE

11 P. 17; Lines 2-3: insert the word "and" between the words "Management" and "Technical" -----

12 Reason for

13 Change: Typo

14 PAGE LINE CHANGE

15 P. 21; Lines 17-18; change "of participants in a program, dollars," to "participants in the 8(a) program, contract dollars," -----

16 Reason for

17 Change: Typo; clarity

18 PAGE LINE CHANGE

19 P. 40; Lines 8-9; First sentence should read: "I'm sure there are several agencies whose goals for SDBs are greater than 5 percent." -----

20 Reason for

21 Change: Typos

22 PAGE LINE CHANGE

23 P. 54; Line 14; Change "certified.gov" to "certify.gov" -----

24 Reason for

25 Change: Typo

Veritext Legal Solutions

1 PAGE LINE CHANGE

2 _ P. 59; Lines 9-10; change "but on the science part, many times it's" to "but if something is incorrect, many times it's" -----

3 Reason for

4 Change: Transcription error

5 PAGE LINE CHANGE

6 _ P. 59; Lines 17-20; sentence should read as follows: "And they do it based upon a certain size standard. Each NAICS code is assigned a corresponding size standard. So I can register as a small business for NAICS Code 123456, and as an other than small business for NAICS Code 123457, depending upon the corresponding size standard corresponding to the NAICS Code." -----

7 Reason for

8 Change: Typos and Clarification

9 PAGE LINE CHANGE

10 _ P. 60; Line 10; change the word "primary" to "apparent" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 _ P. 74; Lines 3-4; should read "or they look for things as to whether there are any outstanding debts or things of that sort." -----

15 Reason for

16 Change: Transcription error

17 PAGE LINE CHANGE

18 _ P. 83; Line 7; should read "Alaska", not "Alaskan" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 _ P. 83; Line 9; delete "or it's -" and add the word "be" between the words "deemed to" and "owned and" -----

23 Reason for

24 Change: Typo

1 PAGE LINE CHANGE

2 _ P. 87; Line 4; change "the ANC owns X and Joe Smith owns 400 percent of one company" to "the
ANC owns 51% of X and Joe Smith owns 49 percent of that company" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 _ P. 107; Line 22; change "company Y" to "country Y" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 _ P. 127; Line 13; change the word "graduate" to "graduation" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 _ P. 138; Line 24; Change "SDBO" to "SDVO"; change "SWB" to "WOSB" -----

15 Reason for

16 Change: Typos

17 PAGE LINE CHANGE

18 _ P. 140; Line 12; change "JCBD" to "GCB" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 _ P. 140; Line 23; Change "4" to "4.5 million" -----

23 Reason for

24 Change: Typo/clarification

1 PAGE LINE CHANGE

2 P. 153; Line 18; change "an it" to "it an" -----

3 Reason for

4 Change: Typo

5 PAGE LINE CHANGE

6 P. 194; Lines 18-19; "7(j) is management technical assistance" should be changed to read "7(j) is a management and technical assistance program" -----

7 Reason for

8 Change: Typo

9 PAGE LINE CHANGE

10 P. 195; Line 15; Change "with grants" to "or grants" -----

11 Reason for

12 Change: Typo

13 PAGE LINE CHANGE

14 P. 195; Lines 22-23; Change "these contractor grantees" to "these contractors or grantees" ---

15 Reason for

16 Change: Typo

17 PAGE LINE CHANGE

18 P. 199; Line 18; Change "as SBA's" to "of SBA's" -----

19 Reason for

20 Change: Typo

21 PAGE LINE CHANGE

22 -----

23 Reason for


24 Change:

ACKNOWLEDGMENT OF DEPONENT

I, John W. Klein, do
 hereby certify that I have read the foregoing
 pages 1 to 212 and that the same is a
 correct transcription of the answers given by
 me to the questions therein propounded,
 except for the corrections or changes in form
 or substance, if any, noted in the attached
 Errata Sheet.

6-10-22

DATE


 SIGNATURE

Subscribed and sworn to before
 me this _____ day of _____, 2022.

My commission expires:

Notary Public